

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAULA JONES,)
)
 Plaintiff,)
)
 v.) Case number 4:06cv0443 CAS
) TCM
 JO ANNE B. BARNHART,)
 Commissioner of Social Security,)
)
 Defendant.)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This is an action under 42 U.S.C. § 405 (g) for judicial review of the final decision of Jo Anne B. Barnhart, Commissioner of Social Security ("Commissioner"), denying the applications of Paula Jones for disability insurance benefits ("DIB") under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-433, and for supplemental security income benefits ("SSI") under Title XVI of the Act, 42 U.S.C. §§ 1381-1383b.¹ After filing her answer, the Commissioner moves to remand this case to the Appeals Council pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff does not oppose this motion.

Plaintiff filed for DIB and SSI in January 2003, alleging she was unable to work after September 2002 because of osteoarthritis and degenerative joint disease. Her applications were denied by the Administrative Law Judge ("ALJ") following an administrative hearing and a review of the records, including those of her treating physician, Peggy Taylor, M.D. The Commissioner moves to remand on the ground that the ALJ did not explain the weight

¹The case was referred to the undersigned United States Magistrate Judge for a review and recommended disposition pursuant to 28 U.S.C. § 636(b).

he gave to Dr. Taylor's opinion and states that the ALJ will be directed on remand to do so and to state his reasons if he rejects that opinion.

A case seeking judicial review of the Commissioner's adverse decision may be remanded pursuant only to sentence four or six of 42 U.S.C. § 405(g). See Shalala v. Schaefer, 509 U.S. 292, 296 (1993); Melkonyan v. Sullivan, 501 U.S. 89, 97-98 (1991). "Sentence four,² by its terms, authorizes a court to enter 'a judgment affirming, modifying, or reversing the decision of the [Commissioner], with or without remanding the case for a rehearing.'" Buckner v. Apfel, 213 F.3d 1006, 1010 (8th Cir. 2000) (quoting § 405(g)) (alteration added). A remand sought by the Commissioner after she files her answer and in the absence of any new and material evidence "meets the substantive requirements of sentence four." Id. The remand sought in the instant case is, therefore, properly considered a sentence four remand. See Pottsmith v. Barnhart, 306 F.3d 526, 528 (8th Cir. 2002) (finding that order granting Commissioner's motion to remand for introduction of medical expert testimony was appropriately made pursuant to sentence four); Boyle v. Halter, 165 F.Supp.2d 943, 943 n.2 (D. Minn. 2001) (noting that Commissioner's motion for remand after answer was appropriately made pursuant to sentence four).

After having filed her answer, the Commissioner requests a remand for the purpose of directing the ALJ to properly consider the opinion of Plaintiff's treating physician. As noted above, Plaintiff has not objected to this motion.

²Sentence four reads as follows: "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g).

Accordingly, for good cause shown,

IT IS HEREBY RECOMMENDED that the Commissioner's Motion to Reverse and Remand be **GRANTED** pursuant to sentence four of 42 U.S.C. § 405(g), her decision be REVERSED, and the case be REMANDED for further proceedings. [Doc. 7]

The parties are advised that they have eleven (11) days in which to file written objections to this Recommendation and the Memorandum incorporated herein pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in waiver of the right to appeal questions of fact.

See **Griffini v. Mitchell**, 31 F.3d 690, 692 (8th Cir. 1994).

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 30th day of May, 2006.